



# EMPLOYMENT TRIBUNALS

## Claimant

## Respondent

Mr C Palanciuc

and

Bespoke Automotive Customs

## Heard at:

Reading

On: 27 September 2018

## Before:

Employment Judge Vowles (sitting alone)

## Appearances

### For the Claimant:

In person (assisted by Mr P Uncuta, interpreter in the Romanian language)

### For the Respondent:

Mr P Clarke, solicitor

## JUDGMENT

### Evidence

- 1 The Tribunal heard evidence on oath and read documents provided by the parties.

### Unauthorised Deduction from Wages – section 13 Employment Rights Act 1996

- 2 The Claimant was owed wages and is awarded £4,200 in compensation. The Respondent is ordered to pay this sum to the Claimant.

### Reasons

- 3 Reasons for this judgment were given orally at the hearing. Written reasons are attached at the request of the Respondent.

## REASONS

### Submissions

1. Claimant On 17 January 2018 the Claimant presented a complaint to the Tribunal claiming unpaid wages and unpaid holiday pay. During the course of the hearing the Claimant withdrew the complaint of unpaid holiday pay.

His claim for unpaid wages related to the period October and November 2017.

2. Respondent On 12 March 2018 the Respondent presented a response to the claim and the claim was resisted.

### **Evidence**

3. The Tribunal heard evidence on oath from the Claimant, Mr Constantin Marian Palanciuc and evidence on oath from Mrs Sam Bola on behalf of the Respondent. Mrs Bola is the wife of the owner of the Respondent company and she is also the secretary for the Respondent. Her role involved calling insurance companies, chasing payments, and admin work.
4. The Tribunal also read documents produced by the parties, including the ET1 claim form, the ET3 response form, an unsigned undertaking, 23 pages of text messages between the Claimant and the Respondent and copies of the Claimant's bank statements, in particular those relating to the period November to December 2017. Apart from the ET3 response form and the unsigned undertaking, all the documents were produced by the Claimant.

### **Application for Postponement**

5. At the start of the hearing, the Claimant applied for a postponement so that he could be represented by a solicitor. The application was not resisted by the Respondent. When the Claimant was told that the case could not be re-listed until July 2019 he withdrew the application for a postponement and said he wished to proceed with the case today.

### **Claimant's case**

6. The Claimant's case was that during October and November 2017, and indeed prior to that time, he worked full time for the Respondent, 6 days per week, usually from 9am to 6pm, but on occasions longer. He said he was paid the rate of £70 per day, that is £420 per week, as an Auto Body Worker as part of the Respondent's car restoration business. He said he was not paid for October and November 2017 and that he ceased working for the Respondent on 1 December 2017.
7. The Claimant produced a detailed and comprehensive record of text messages between himself and Mr and Mrs Bola during the period October to December 2017.

### **Respondent's case**

8. The Respondent's case was that the Claimant was self-employed and that he did odd jobs on a part time basis for the Respondent as and when required. The Respondent accepted that he did the work personally and therefore qualified as a worker under section 230 Employment Rights Act

1996 and would therefore be entitled to pursue a claim for unpaid wages under section 13 of the Act. The Respondent claimed that the Claimant has been paid all that he was entitled to receive for work he had done for the Respondent.

9. Mrs Bola said that she did not recognise many of the text messages produced by the Claimant, although she accepted that some were genuine. For example, at page 42 of the documents, she accepted that her response to a message from the Claimant on 6 December 2017 where she said “*Call Ikki [which is the nickname of her husband] I’m not home*” were genuine messages in reply from her. However, she said that further replies immediately afterwards, said to come from her which say “*We have no money to give you Mario. I’m sorry. Hopefully soon we have money for you*” were not genuine. They were however all timed at 19:38 and 19:40.

### Findings of fact

10. The Tribunal found that the Claimant’s account of the genuineness of the text messages between himself and Mr and Mrs Bola was correct. The messages show the Claimant’s telephone number when he sends a message and they show the initials “YKY” for Mr Bola’s response (his nickname is Ikki), and it shows the words “*Sam Sotia YKY*” for Mrs Bola’s replies.
11. It was implausible that the Claimant’s records of text messages had been in some way falsified or that they were not genuine. The Respondent did not provide any basis for that suggestion. It was clear from the content of messages between the Claimant and Mr and Mrs Bola during October to December 2017 that the Claimant was regularly asking to be paid for his work. In their responses to those messages they were accepting that he had not been paid and were regularly offering excuses for not paying him and offering to pay him at some point in the future when there were sufficient funds to enable them to do so.
12. By contrast, the Respondent produced no records to support its assertions that the Claimant was a part time odd job man and that he had been paid all that he is entitled to receive. Even a small employer would be reasonably expected to support such an assertion with some written record of work done, days worked, hours worked, and payments made. No such records were produced nor, according to Mrs Bola, do any such records even exist.

### Decision

13. The Tribunal found that the Claimant’s account of being owed wages was well founded, supported as it was by his record of text messages between him and the Respondent. The Respondent’s account is unsupported by any records whatsoever in circumstances where even a small employer could reasonably be expected to produce some records.

14. The Claimant's claim for unpaid wages was well founded and he is awarded the amount claimed which is 10 weeks at £420 per week, a total of £4,200.

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Employment Judge Vowles

Date: 05/10/2018

Sent to the parties on:

10/10/2018

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For the Tribunal Office

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